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JOHN C. DANFORTH
ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

July 31, 1974

OPINION LETTER NO. 255

Mr. Jack K. Smith, Executive Secretary
Missouri Clean Water Commission
1014 Madison Street
Jefferson City, Missouri 65101

Dear Mr. Smith:

This official opinion is issued in response to your request addressed to this office. Your request reads as follows:

"Does Missouri law meet the requirements of the Federal Water Pollution Control Act Amendments of 1972 for the NPDES state permit program as outlined in the attached letter from the U.S. Environmental Protection Agency? Specific responses to the questions posed therein are requested in your opinion."

We understand that the letter referred to in your request poses a number of questions, arranged in eleven categories which require a response. The answers to these questions will provide the answer to your question per your request. Therefore, we will answer these eleven categories of questions, in the format suggested by the United States Environmental Protection Agency.

After the passage of the Federal Water Pollution Control Act Amendments of 1972, the State of Missouri amended its Clean Water Law with the passage of Senate Bill 321, Seventy-Seventh Legislature, effective on July 23, 1973. Therefore, citation to Missouri statutes herein are to the Revised Statutes of Missouri, Supplement 1973, unless otherwise indicated. Citations to relevant Federal statutes herein have been supplied by the Environmental Protection Agency as shown in brackets following each question.

The questions posed by the letter attached to your request, with answers in the format suggested by the Environmental Protection Agency, are as follows:

1. Authority to Issue Permits

a. Existing and new point sources.

Does Missouri law provide authority to issue permits for the control of discharge of pollutants by existing and new point sources to the same extent as is required under the permit program administered by the U.S. Environmental Protection Agency (hereinafter "EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S. C.A. §1251, et seq?

[Relevant provisions in and pursuant to the Federal Water Pollution Control Act Amendments of 1972 (hereinafter "FWPCA") include §§301(a) and 402(a)(1) of that act, and 40 C.F.R. §124]

It is our opinion that Missouri law does provide such authority, which is found in Sections 204.016, 204.026(13) and 204.051 of the Missouri Clean Water Law.

Section 204.016(6) defines "point source" as:

". . . any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;"

Section 204.016(12) defines "water contaminant" as:

". . . any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations set forth in sections 204.006 to 204.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act."

The definition of "point source" found in Section 204.016(6) above is identical to the definition of "point source" found in Section 502(14) of the FWPCA. And the definition of "water contaminant" as used in the Missouri Clean Water Law includes any "pollutant" under the FWPCA. Therefore, when the term "water contaminant" is used in the Missouri Clean Water Law, it also refers to any "pollutant" under the FWPCA.

Section 204.026(13) provides that the Missouri Clean Water Commission (hereinafter "Commission") shall:

"Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution or any violations of sections 204.006 to 204.141 or any federal water pollution control act, permits

for the discharge of water contaminants into the waters of this state, and for the installation, modification or operation of treatment facilities, sewer systems or any parts thereof. Such permit conditions, in addition to all other requirements of this subdivision, shall insure compliance with all effluent regulations or limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and time schedules thereunder as established by sections 204.006 to 204.141 and any federal water pollution control act; however, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works."

We read this section to require that permits for the discharge of water contaminants or for the installation, modification or operation of treatment facilities and sewer systems can be issued only when the activity is in, or on such conditions as will insure, compliance with all applicable federal standards and regulations.

Section 204.051(2) provides it shall be unlawful to build, erect, alter, replace, operate, use or maintain any point source unless a permit is issued therefor. Section 204.051(3) requires that every existing or proposed point source which will be subject to any federal water pollution control act, or regulation thereunder must apply for a permit. Section 204.051(5) provides that the permit shall be granted or denied within 60 days "after all requirements of the Federal Water Pollution Control Act concerning the issuance of permits have been satisfied", unless the applicant does not require a permit under the FWPCA.

Section 204.016(15) defines "waters of the state" to include:

"... all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state."

As this definition includes waters of the United States lying within the state, "waters of the state" include "navigable waters" as defined by Section 502(7) of the FWPCA. Therefore, the coverage of the Missouri Clean Water Law, with regard to specific bodies of water, is at least as extensive as the coverage by the FWPCA.

It is our opinion that the above cited sections of the Missouri Clean Water Law require the issuance of a permit before any point source can discharge water contaminants into the waters of this state, and further require that permits be issued only after compliance with the Federal Water Pollution Control Act. Therefore, state law does provide the authority to issue permits for the control of discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the EPA pursuant to Section 402 of the FWPCA, as amended.

b. Disposal into wells

Does state law provide authority to control the disposal of pollutants into wells?

[Relevant provisions in and pursuant to the FWPCA are in §402(b)(1)(D) of that act and 40 C.F.R. §124.80]

The authority to control the disposal of pollutants into wells is found in Sections 204.016 and 204.051 of the Missouri Clean Water Law and Section 564.025, RSMo. Suppl. 1973.

As discussed in subparagraph "a." above, Section 204.051 requires a permit for the use, operation, maintenance, construction or alternation of any new or existing point source, and that permit must conform to the requirements of the FWPCA.

Section 204.016(6) defines "point source" to include any "well . . . from which pollutants are or may be discharged." Section 204.016(1) defines "discharge" as "the causing or permitting of one or more water contaminants to enter waters of the state." "Water contaminant" is defined by Section 204.16(12), as set out in subparagraph "a." above, to include any matter, or temperature change, or other pollutant "which is in or enters any waters of the state either directly or indirectly by . . . subsurface seepage or otherwise. . . ." Section 204.016(15) defines "waters of the state" to include "subsurface water".

We read the above cited statutes to prohibit the discharge of pollutants into wells without a permit therefor, which permit must comply with state and federal standards and conditions. This is so for two reasons. First, discharge of a pollutant into a well would constitute the maintenance of a water contaminant or point source, for which Section 204.051.2 requires a permit. Second, it would constitute a violation of Section 204.051.1(1), which makes it unlawful:

" . . . to place or cause or permit be placed any water contaminant in a location where it is reasonably certain to cause pollution of any water of the state."

Furthermore, the discharge of certain matter into wells is absolutely prohibited under any circumstance. Section 564.025, RSMo. Suppl. 1973 provides:

- "1. No person, firm, corporation or political subdivision shall construct or use any waste disposal well located in this state.
2. As used in this section, "waste disposal well" shall mean any subsurface void porous formation or cavity, natural or artificial, used for the disposal of liquid or semiaqueous waste except as excluded in subsection 3 of this section.
3. "Waste disposal well" shall not include:
 - (1) Sanitary landfills or surface mining pits used for the disposal of nonputrescible solid wastes as defined in section 64.460, RSMo 1969;
 - (2) Cesspools used solely for disposal of waste from private residences;
 - (3) Septic tanks used solely for disposal of waste.

Therefore, under this statute no liquid or semiaqueous waste may be discharged into a well. Thus, it is our opinion that Missouri law provides adequate authority to control the disposal of pollutants into wells.

2. Authority to Apply Federal Standards and Requirements.

a. Effluent standards and limitations and water quality standards.

Does state law provide authority to issue permits which may include conditions written to enforce provisions at least as stringent as those found in the following applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA:

- (1) Effluent limitations pursuant to Section 301;
- (2) Water quality related effluent limitations pursuant to Section 302;
- (3) National standards of performance pursuant to Section 306;
- (4) Toxic and pretreatment effluent standards pursuant to Section 307?

[Relevant FWPCA provisions include §§301(b), 301(e), 302, 303, 304(d), 304(f), 305, 307, 402(b)(1)(A), 208(e), and 510 and 40 C.F.R. §124.42.]

The authority referred to in the above question is found in Sections 204.026(13) and (16) and 204.051, Missouri Clean Water Law. Section 204.026(13) provides that the Clean Water Commission shall issue permits under such conditions as it may prescribe, to prevent, control or abate pollution, violations of the Missouri Clean Water Law or any federal water pollution control act. This section further provides that:

"Such permit conditions, in addition to all other requirements of this subdivision, shall insure compliance with all effluent regulations or limitations, water quality related effluent limitations, national standards of performance and toxic

and pretreatment effluent standards, and all requirements and time schedules thereunder as established by sections 204.006 to 204.141 and any federal water pollution control act." Section 204.026(13).

It is our opinion that Section 204.026(13) requires the Commission to issue its permits under such conditions as will insure compliance with applicable effluent limitations, water quality related effluent limitations, national standards of performance, and toxic and pretreatment effluent standards pursuant to Sections 301, 302, 306 and 307 of the FWPCA.

Moreover, Section 204.051.3, which applies to both new and existing point sources, provides that permits shall be issued upon such conditions as are deemed "necessary to insure that the source will meet the requirements of . . . any federal water pollution control act as it applies to this state." We read the quoted language to reaffirm the command of Section 204.026(13) that all permits be issued upon such conditions as are necessary to insure compliance with the standards established by or pursuant to the FWPCA.

It should be noted at this point that Section 204.051.3 contains no language which would make a distinction between permit requirements for publicly owned treatment works and other point sources. In this regard, the definition of "person" found in Section 204.016(5) includes any public corporation, political subdivision, or any agency, board, department or bureau of the

state or federal government. Section 204.051.1(3) makes it unlawful for any "person":

"To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act."

It is our opinion that the cited statutes make the permit requirements (including conditions) equally applicable to publicly owned treatment works as well as to other point sources.

In addition to the requirement in Sections 204.026(13) and 204.051.3 that permits be issued upon such conditions as are necessary to insure compliance with federal standards, Section 204.026(16) provides that the Commission shall:

"Establish effluent and pretreatment and toxic material control regulations to further the purpose of sections 204.006 to 204.141 and as required to insure compliance with all effluent limitations, water quality related effluent limitations, national standards of performance and toxic and pretreatment effluent standards, and all requirements and any time schedules thereunder, as established by any federal water pollution control act for point sources in this state. . . ."

Although we read Section 204.026(16) to give the Commission full authority to promulgate standards at least as stringent as federal regulations for effluent limitations, water quality related effluent limitations, national standards of performance, and toxic and pretreatment effluent standards, we do not believe that it is necessary for the Commission to promulgate such standards before

enforcing applicable federal standards and limitations through the permit system. Because Section 204.026(13) provides that the Commission may issue permits "under such conditions as it may prescribe," it is our opinion that the Commission has the authority to apply the above-mentioned federal standards (through the permit system) without first promulgating or adopting those standards as part of the regulations of the Commission.

It should be noted that even though a permit is not required for emissions into any publicly owned treatment works, or sewer system tributary thereto, Section 204.051.2, the Commission does have the authority to directly enforce against industrial users of publicly owned treatment works, pretreatment effluent standards at least as stringent as are required by the FWPCA. As was discussed above, Section 204.026(16) requires the Commission to establish pretreatment control regulations as required to insure compliance with all pretreatment effluent standards established by the FWPCA. Section 204.051.1(3) makes it unlawful to violate any pretreatment regulations established by the Commission or required by the FWPCA. Therefore, federal pretreatment effluent standards are directly enforceable, through Section 204.026(16), by the Commission.

Section 208 of the FWPCA prohibits the issuance of a permit for any point source which is in conflict with an approved area wide plan. Therefore, it is necessary, in order to obtain approval of the Missouri permit program under Section 402(b) of the FWPCA, that the Missouri Clean Water Law provide the authority to issue permits under conditions specified in such an area wide plan. It

is our opinion that because Section 204.026(13) requires permits to insure compliance with any federal water pollution control act, the Commission has the authority to issue permits upon conditions which insure compliance with an area wide plan adopted pursuant to Section 208(b) of the FWPCA.

We understand question "2.a." to originally have included an inquiry as to enforcement by the state permit system of federal ocean discharge criteria pursuant to Section 403 of the FWPCA. As Missouri does not border any ocean or sea, the Missouri Clean Water Law does not provide for the promulgation or enforcement of ocean discharge criteria, and it was unnecessary to discuss the promulgation or enforcement of standards pursuant to such criteria.

b. Effluent limitation requirements of Section 301 and 307.

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, does Missouri law provide authority to issue permits with conditions which would achieve the purpose of FWPCA Sections 301(b) and 307 by:

- (1) Applying effluent limitations to existing point sources, other than publicly owned treatment works, which would be based on application of the best practicable control technology currently available or the best available technology economically achievable;
- (2) Applying effluent limitations to publicly owned treatment works, which would be based upon the application of secondary treatment or the best practicable waste treatment technology; and
- (3) Applying effluent limitations to any point source which would be written to control or if necessary, prohibit the discharge of toxic pollutants in toxic amounts, or to require pre-treatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works?

[Relevant FWPCA provisions are found in Sections 301, 304(d), 307, 402(a)(1), 402(b)(1)(A) and 40 C.F.R. §124.42(a)(6).]

We understand this question to be directed to the situation where there are no federally promulgated effluent standards and limitations (pursuant to Sections 301(b) and 307 of the FWPCA) for a particular point source, yet such point source is discharging pollutants into the waters of this state. We understand the question to ask whether in the absence of such standards and limitations which would be enforced by the Commission through Sections 204.026(13) or (16) and Section 204.051.3 (as discussed in paragraph 2.a., above) the Commission has the authority to issue permits upon conditions which nevertheless achieve the purpose of Sections 301 and 307 of the FWPCA. The necessary authority is found in Sections 204.026(13) and 204.051.3 of the Missouri Clean Water Law.

Section 204.026(13) provides, inter alia, that the Commission shall, with respect to permits:

"Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate. . . any violations of . . . any federal water pollution control act. . ."

Section 204.051.3 provides, inter alia, that the executive secretary of the Commission shall:

"issue a permit with such conditions as he deems necessary to insure that the source will meet the requirements of . . . any federal water pollution control act as it applies to sources in this state."

We read these statutes to mean that the Commission has the authority to issue permits upon any and all conditions as are necessary to meet the requirements of, prevent violation of, and achieve the purposes of, any federal water pollution control act.

Specifically, it is our opinion that Sections 204.026(13) and 204.051.3 provide the authority for the Commission to issue permits upon such condition as would achieve the purposes of FWPCA Section 301(b) and 307 by:

- (1) Applying effluent limitations to existing point sources, other than publicly owned treatment works, which would be based on application of the best practicable control technology currently available or the best available technology economically achievable;
- (2) Applying effluent limitations to publicly owned treatment works, which would be based upon the application of secondary treatment or the best practicable waste treatment technology; and
- (3) Applying effluent limitations to any point source which would be written to control or if necessary prohibit the discharge of toxic pollutants in toxic amounts, or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works.

c. Schedules of compliance

Does state law provide authority to set and revise schedules of compliance in issued permits which would require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time, consistent with the requirements of the FWPCA? Is there a requirement that the Clean Water Commission show a violation of effluent limitations or water quality standards before it can enforce compliance dates, interim or final?

[Relevant FWPCA provisions include Sections 301(b), 303(e), 304(b), 306, 307, 402(b)(1)(A), 401(11), 502(17) and 40 C.F.R. §§124.44 and 124.72]

The authority referred to in the first question above is found in Sections 204.026(13) and 205.051.3 of the Missouri Clean Water Law. Section 204.026(13) provides, inter alia, that the Commission shall:

"Issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate. . . any violations of . . . any federal water pollution control acts, permits. . . . Such permit conditions . . . shall insure compliance with all [standards and limitations discussed in 2a above], and all requirements and time schedules thereunder as established by . . . any federal water pollution control act." [emphasis added]

Section 204.051.3 provides that the executive secretary of the Commission:

"shall issue a permit with such conditions as he deems necessary to insure that the source will meet the requirements of . . . any federal water pollution control act as it applies to this state."

We read the above-quoted statutes to require that any permit issued contain such conditions as are necessary to insure compliance with the FWPCA. Section 204.026(13) specifically mentions "time schedules" established by any federal water pollution control act as being a necessary part of the conditions of a permit. Therefore, Section 204.026(13) requires that any schedule of compliance necessary to insure compliance with the FWPCA be made part of the conditions of the permit, including interim compliance dates where necessary. Section 204.026(13) also authorizes the Commission to modify any permit to achieve the purpose

specified. Therefore, the Commission has the authority to revise a schedule of compliance to insure compliance with applicable effluent standards and limitations.

With regard to the situation where an applicable effluent standard or limitation contains no schedule of compliance, Section 204.051.3 would require the executive secretary to issue a permit upon such conditions as will insure that the applicable requirements of any federal water pollution control act are met. Therefore, if the FWPCA requires, in the absence of a schedule of compliance, that the permit insure compliance with effluent standards and limitations within the shortest reasonable time consistent with the requirements of the FWPCA, as 40 C.F.R. §124.44 (a) (2) suggests, then the Commission can issue the permit upon conditions which will achieve such compliance. It is our opinion that Sections 204.026(13) and 204.051.3 provide authority to set and revise schedules of compliance in issued permits which would require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA.

In answer to the second question above, it is our opinion that Sections 204.051.1(3) and 204.076.1 of the Missouri Clean Water Law provide for the enforcement of a compliance date, interim or final, without the necessity of first showing a violation of effluent limitations or water quality standards.

3. Authority to Deny Permits in Certain Cases

Does the Missouri law preclude issuance of permits which would:

- a. Authorize the discharge of radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. In the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of waters of the United States;
- c. Be objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the FWPCA; or
- d. Authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the FWPCA?

[Relevant FWPCA provisions include Sections 301(f), 402(b)(6), 402(d)(2), and 208(e); 40 C.F.R. §§124.41 and 124.46].

The statutory language which precludes the types of permits referred to in the above question is found in Sections 204.026(17), 204.051.1(4), 204.051.3, and 204.051.9 of the Missouri Clean Water Law.

Section 204.026(17) provides that the Commission shall:

"Prohibit all discharges of radiological, chemical, or biological warfare agent or high-level radiological waste into waters of this state."

Section 204.051.1(4) makes it unlawful to do those things prohibited by Section 204.026(17). These two statutes absolutely prohibit the activity referred to in subparagraph "a." above.

Section 204.051.9 provides that:

"In any event, no permit hereunder shall be issued if properly objected to by the federal government or any agency authorized to object under any federal water pollution control act. . . ."

We read this statute to prohibit the Commission from issuing a permit in those instances where the FWPCA provides that a permit shall not issue upon the proper objection of a federal official. Therefore, in those instances described in subparagraphs "b." and "c." above, where a federal official is given the authority by the FWPCA to object to the issuance of a permit, such an objection would result in the denial of a permit by the Commission.

Section 204.051.1(3) provides that it is unlawful:

" . . . to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act."

Section 204.051.3 provides, inter alia, that the executive secretary of the Commission shall issue a permit under such conditions as will insure compliance with the Missouri Clean Water Law and the FWPCA. The section then continues:

"If the executive secretary determines that the source does not meet or will not meet the requirements of either act and the regulations pursuant thereto, he shall deny the permit under the applicable act. . . ."

We read the last two quoted sections as prohibiting any discharge which would be in conflict with the FWPCA and regulations pursuant to the FWPCA. A plan promulgated pursuant to Section 208 of the FWPCA would be included among the requirements of the act and such regulations, and the activity described in subparagraph

"d." above could not be authorized by the Commission.

Moreover, as was discussed in paragraph "2.a.", supra, Section 204.026(13) requires permits to be issued under such conditions as will insure compliance with the FWPCA. Therefore, a permit could not be issued pursuant to Section 204.026 if such permit would conflict with an area wide plan and thus violate Section 208(e) of the FWPCA.

4. Authority to Limit Duration of Permits

Does the Missouri law limit the duration of permits thereunder to a fixed term not exceeding five years?

[Relevant FWPCA provisions include Section 402(b)(1)(B); 40 C.F.R. §124.5.]

Section 204.051.10 of the Missouri Clean Water Law provides that "[o]perating permits shall be issued for a period not to exceed five years after date of issuance. . . ." Therefore, any permit for the discharge of water contaminants issued under the Missouri permit system would be issued for a fixed term not to exceed five years.

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirement.

Does Missouri law provide authority to:

- a. Require any permit holder or industrial user of a publicly owned treatment works to:

- (1) Install, calibrate, use and maintain monitoring equipment or methods and take samples of effluents as required by the Missouri Clean Water Commission and establish and maintain specified records and make reports, and
 - (2) Provide such other information as may reasonably be requested by the Commission?
- b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:
- (1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;
 - (2) At reasonable times have access to and copy any records required to be maintained;
 - (3) Inspect any monitoring equipment or method which is required; and
 - (4) Have access to and sample any discharge of pollutants to State waters or to publicly owned treatment works resulting from the activities or operations of the permittee or industrial user?

[Relevant FWPCA provisions include Sections 304(h)(2)(A) and (B), 308(a), 402(b), and 402(b)(9); 40 C.F.R. §§ 124.45(c), 124.61-63, and 124.73(d).]

The required authority is found in Sections 204.026(20), 204.026(23), 204.051.3 and 204.051.5 of the Missouri Clean Water Law. Section 204.026(23) provides that the Commission shall:

"Require persons owning or engaged in operations which do or could discharge water contaminants, or introduce water contaminants or pollutants of a quality and quantity to be established by the commission, into any publicly owned treatment works or facility, to provide and maintain any facilities and conduct any tests and monitoring necessary to establish and maintain records and to file reports containing information relating to measures to prevent, lessen or render any discharge less harmful or relating to rate, period, composition, temperature, and quality

and quantity of the effluent, and any other information required by any federal water pollution control act or the executive secretary hereunder, and to make them public, except as provided in subdivision (20) of this section. The commission shall develop and adopt such procedures for inspection, investigation, testing, sampling, monitoring and entry respecting water contaminant and point sources as may be required for approval of such a program under any federal water pollution control act."

In this same regard, Section 204.051.5 provides that:

"The executive secretary or the commission may require the applicant to provide and maintain such facilities or to conduct such tests and monitor effluents as necessary to determine the nature, extent, quantity or degree of water contaminant discharged or released from the source, establish and maintain records and make reports regarding such determination."

We read Sections 204.026(23) and 204.051.5 as providing all the authority necessary to require any permit holder or industrial user of a publicly owned treatment works to do those things mentioned in paragraph "5.a." above.

Section 204.026(20) provides that the Commission shall:

"Develop such facts and make such investigations as are consistent with the purposes of sections 204.006 to 204.141, and, in connection therewith, to enter or authorize any representative of the commission to enter at all reasonable times and upon reasonable notice in or upon any private or public property for any purpose required by any federal water pollution control act or sections 204.006 to 204.141 for the purpose of developing rules, regulations, limitations, standards, or permit conditions, or inspecting or investigating any records required to be kept by sections 204.006 to 204.141 or any permit issued hereunder,

any condition which the commission or executive secretary has probable cause to believe to be a water contaminant source or the site of any suspect violation of sections 204.006 to 204.141, regulations, standards or limitations, or permits issued hereunder. The results of any such investigation shall be reduced to writing, and shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for the purposes of inspection under this provision, to an authorized representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or magistrate having jurisdiction to any representative for the purpose of enabling him to make such inspection."

In addition, Section 204.026(23) provides that:

"[t]he commission shall develop and adopt such procedures for inspection, investigation, testing, sampling, monitoring and entry respecting water contaminant and point sources as may be required for approval of such a program under any federal water pollution control act."

We read Sections 204.026(20) and 204.026(23) as providing all of the authority necessary to perform those activities mentioned in paragraph "5.b." above.

In connection with the above question, it should be noted that Sections 204.026(20) and 204.026(23) provide that the Commission shall or may require or do those things mentioned in those sections. We read the language used in those sections to empower the Commission to take direct action, by way of an appropriate regulation or order, to insure that those activities mentioned in

the above question are carried out. In addition, Section 204.051.3 requires that a permit be issued:

"with such conditions as [the executive secretary] deems necessary to insure that the source will meet the requirements of sections 204.006 to 204.141 and any federal water pollution control act as it applies to sources in this state."

We read Section 204.051.3 to empower the Commission and the executive secretary to include as a condition of a permit a requirement that the permittee do, or allow Commission employees to do, those things mentioned in the above question. Therefore, it is our opinion that the Commission may execute the above listed requirements both through the permit system and through a separate regulatory procedure.

6. Authority to Require Notice of Introductions of Pollutants into Publicly Owned Treatment Works.

Does State law provide authority to issue permits to publicly owned treatment works incorporating conditions requiring the permittees to give notice to the State permitting agency of:

- a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;
- b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or

- c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit?

[Relevant FWPCA provisions include Section 402(b)(8); 40(C.F.R. 124.45(d).]

The authority to require the above-mentioned notice is found in Section 204.051.12 of the Missouri Clean Water Law. This section provides that:

"Every permit issued to municipal or any publicly owned treatment works or facility shall require the permittee to provide the clean water commission with adequate notice of any substantial new introductions of water contaminants or pollutants into such works or facility from any source for which such notice is required by sections 204.006 to 204.141 or any federal water pollution control act. Such permit shall also require the permittee to notify the clean water commission of any substantial change in volume or character of water contaminants or pollutants being introduced into its treatment works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility and the anticipated impact of such introduction on the quality or quantity of effluent to be released from such works or facility into waters of the state."

We read Section 204.051.12 to require that any permit issued to a publicly owned treatment works include such conditions as will require such notice to the Commission as is specifically set out in

that section, or as is required by the FWPCA. As Section 402(b)(8) of the FWPCA requires notice to the permitting agency in those instances mentioned in subparagraphs "a" through "c" above, Section 204.051.12 requires that the permit issued to the publicly owned treatment works require such notice to the Commission. In addition, Section 204.051.12 specifically provides that the permit is to require notice in the situation covered by subparagraph "c" above.

It should be noted, in regard to meeting the notice requirements of the FWPCA, that Section 204.051.12 provides that the notice must describe:

"... the quality and quantity of effluent being introduced or to be introduced into such works or facility and the anticipated impact of such introduction on the quality or quantity of effluent to be released from such works or facility into waters of the state."

It is the opinion of this office that Section 204.051.12 provides the authority referred to in the above question and required by Section 402(b)(8) of the FWPCA.

Implicit in the effective implementation of the scheme of reporting discussed above is the ability of the permittee to obtain the necessary information regarding new introduction of pollutants, and any change in the character or volume of the flow, into the treatment works. As was discussed in paragraph 5, supra, the Commission has full authority to require testing, monitoring, record keeping and reporting by all sources, including sources introducing pollutants into a publicly owned treatment works. The Commission, pursuant to Section 204.026(23), could require that such reports include data concerning the introduction of new

pollutants and changes in the volume and character of flow into the treatment works. Sections 204.026(20) and 204.026(23) also require that such reports be made public. Therefore, reports from industrial users of the treatment works, containing the necessary information, would be available to the permittee.

In addition to the authority to require reports by industrial users of publicly owned treatment works, Commission employees are also empowered by Section 204.026(20) to enter private property to conduct, as incident to the Commission's inspection duties set out in Section 204.026(20), independent testing and monitoring of pollutant sources. The information obtained from such inspections would of course be made available to publicly owned treatment works, as it would be available to the public. It is the opinion of this office that the combination of reports required to be filed pursuant to Section 204.026(23) and inspections by the Commission pursuant to Section 204.026(20) will provide all the information necessary for publicly owned treatment works (permittees) to give the notices required by Section 402(b)(8) of the FWPCA.

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

Does the State law provide authority to require that industrial users of publicly owned treatment works:

- a. Pay user charges and recovery of construction costs outlined in Section 204(b) of FWPCA;
- b. Comply with toxic pollutant effluent standards and pretreatment standards at least as stringent as those adopted pursuant to Section 307; and
- c. Comply with inspection, monitoring and entry requirements pursuant to Section 308?

[Relevant FWPCA provisions include Section 402(b)(9); 40 C.F.R. Section 124.45(e).]

The necessary authority referred to in this question is found in Section 204.026(16), (18), (20) and (23), 204.041, and 204.051.1 (3) and 204.076.1 of the Missouri Clean Water Law.

Section 204.026(18) provides that the Commission shall:

"[R]equire that all publicly owned treatment works and facilities which receive or have received grants from the state or the federal government for construction or improvement make all charges required by sections 204.006 to 204.141 or any federal water pollution control act for use and recovery of capital costs, and the operating authority for such works or facility is hereby authorized to make any such charges."

We read this section to empower the operating authority of the treatment works to set user charges and capital cost recovery charges as required by the FWPCA. The establishment of these charges would be required as a condition of the permit issued to the treatment works, pursuant to Section 204.051.3 (see paragraph "1.a.", supra, concerning compliance with and implementation of FWPCA standards in issuing state permits). We read Section 204.026(18) to provide all of the authority required by subparagraph "a" above.

With regard to subparagraph "b" above, Section 204.026(16) provides (as discussed in paragraph 2.a., supra) the authority for the Commission to promulgate pretreatment and toxic material control standards at least as stringent as those adopted pursuant to Section 307 of the FWPCA. Furthermore, Section 204.041 provides:

"As promptly as possible the commission shall adopt and promulgate reasonable effluent, pretreatment and toxic material control regulations which require the use of effective treatment facilities, or other methods to prevent water contamination, for each and every significant source, potential source, and classification of sources of water contaminants, or to limit or prevent introduction of water contaminants into publicly owned treatment works or facilities as required under any federal water pollution control act, throughout the state and thereafter may modify such regulations from time to time."

Section 204.076.1 provides that it is unlawful to discharge any water contaminant in violation of the Missouri Clean Water Law or any standard, rule or regulation promulgated by the Commission.

We read Sections 204.026(16), 204.041 and 204.076.1 as providing the authority to require that industrial users of publicly owned treatment works comply with toxic pollutant effluent standards and pretreatment standards at least as stringent as those adopted pursuant to Section 307 of the FWPCA.

With regard to the authority required by subparagraph "c" above, it is the opinion of this office that Sections 204.026(20) and 204.026(23) provide the authority to require that industrial users of publicly owned treatment works comply with inspection, monitoring and entry requirements pursuant to and at least to the same extent as required by Section 308 of the FWPCA. (See discussion in paragraphs 5 and 6, supra).

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

Does State law provide authority to comply with the following requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 (hereinafter "the Guidelines") to:

- a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be required; and
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits?

[Relevant FWPCA provisions include generally Sections 101(e) and 304(h)(2)(B), and for question 8a, Sections 402(b)(3) (public notice), 402(b)(5) (notice to affect states), 402(b)(6) (notice to Army Corps of Engineers); 40 C.F.R. §§ 124.31 (tentative permit determinations), 124.32 (public notice), 124.33 (fact sheets) and 124.34 (notice to government agencies); and for question 8(b), Sections 402(b)(4) (notices and permit applications to EPA), 402(b)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§ 124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.34 (notice to other government agencies), 124.46 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA); and for question 8c, Section 402(b)(3) (opportunity for public hearing); 40 C.F.R. §§ 124.36 (public hearings), 124.37 (notice of public hearings).]

The authority to comply with the above notice and hearing requirements is found in Sections 204.026(11) and (15), 204.051.3 and 204.051.4 of the Missouri Clean Water Law. Section 204.051.3, requiring new and existing point sources to apply for a permit, also provides:

"The executive secretary shall promptly investigate each application, which investigation shall include such hearings and notice, and consideration of such comment and recommendations as required by section 204.006 to 204.141 and any federal water pollution control act."

Section 204.051.4 further provides:

"Before issuing a permit to build or enlarge a water contaminant or point source or reissuing any permit, the executive secretary shall issue such notices, conduct such hearings, and consider such factors, comments and recommendations as required by section 204.006 to 204.141 or any federal water pollution control act."

Moreover, Section 204.026(11) provides that the Commission shall:

"[h]old such hearings, issue such notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, administer such oaths, and take such testimony as the commission deems necessary or as required by any federal water pollution control act. Any of these powers may be exercised on behalf of the commission by any members thereof or a hearing officer designated by it."

And Section 204.026(15) provides that the Commission shall:

"[e]xercise all incidental powers necessary to carry out the purposes of sections 204.006 to 204.141, assure that the state of Missouri complies with any federal water pollution control act, retains maximum control thereunder and receives all desired federal grants, aid and benefits."

It will be noted that the above quoted sections empower and require the Commission to give such notice and conduct such hearings as are required by the FWPCA before issuing or denying a permit. Further, we read Section 204.026(15) to give the Commission the authority to transmit such data and documents as required by, and to such persons and governmental bodies and agencies as are required by the FWPCA. Therefore, it is the opinion

of this office that the above-cited statutes provide the authority called for in paragraph 8.

9. Authority to Provide Public Access to Information

Does State law provide authority to make the following information available to the public, consistent with the requirements of the FWPCA and the Guidelines:

- a. Except insofar as trade secrets as defined in 9b below would be disclosed, the following information:
 - (1) Any NPDES permit, permit application or form;
 - (2) Any public comments, testimony or other documentation concerning a permit application; and
 - (3) Any information obtained pursuant to any monitoring, recording, reporting, or sampling requirements or as a result of sampling or other investigatory activities of the state?
- b. Confidential information shall for purposes of this opinion request include that information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

[Relevant FWPCA provisions include Sections 304(h)(2)(B), 308(b), 402(b)(2) and 402(j); 40 C.F.R. § 124.35]

The authority required by paragraph 9 is found in Sections 204.026(3), (6), (11), (15), (20), and (23), 204.051.3, 204.051.4, 204.066.1 and 204.136(1) of the Missouri Clean Water Law.

With regard to subparagraph "9.a.(1)" above, Section 204.026(6) provides that the Commission shall "collect and disseminate information relating to water pollution and the prevention, control and abatement thereof." Section 204.026(15), set out in paragraph 8, supra, authorizes the Commission to exercise all incidental

powers necessary to assure that the State complies with the requirements of the FWPCA. And Section 204.136(1) provides that the Commission may:

"[t]ake all necessary and appropriate action to obtain for the state the benefits of any federal act, or to obtain approval of any state water pollution control program."

We read these sections in conjunction with the requirements of giving notice in Sections 204.051(3) and (4) as giving the Commission the authority to make public any NPDES permit, permit application, or form, if so required by the FWPCA.

With regard to subparagraph "9.a.(2)" above, Sections 204.026(11) and (15), 204.051.3 and 204.051.4 require public hearings upon all permit applications (See discussion in paragraph 8, supra.) Moreover, section 204.066.1 provides:

"At any public hearing all testimony taken before the commission shall be under oath and recorded stenographically. The transcript so recorded shall be made available to any member of the public. . . ."

We read the above sections to require that any public comments, testimony or other documentation concerning a permit application be available to the public.

It should be noted that the statutes cited for the authority required by subparagraphs "9.a.(1)" and "9.a.(2)" above contain no "trade secret" or "confidential information" limitation. Therefore, it is our opinion that these statutes authorize disclosure of the information to the fullest extent required by the FWPCA.

With regard to the authority required by paragraph "9.a.(3)" above, Sections 204.026(20) and (23) control. As was discussed in paragraph 5, supra, these sections require monitoring, sampling,

record keeping and reporting by those maintaining point sources, and authorize investigations by the Commission to insure that the above requirements are complied with and to obtain independent information concerning discharge of water contaminants. Section 204.026(20), relating to commission investigations, further provides that:

"[i]nformation obtained under this section shall be available to the public unless it constitutes trade secrets or confidential information, other than effluent data, of the person from whom it is obtained, except when disclosure is required under any federal water pollution control act."

And Section 204.026(23) requires persons conducting the required testing, monitoring, record keeping and reporting to "make them public, except as provided in subdivision (20) of this section."

The last two cited sections obviously provide for disclosure of information as required by subparagraph "9.a.(3)" above. Moreover, the limitations on disclosure therein provided (i.e. trade secrets and confidential information) do not exceed limitations allowed by subparagraph "9.b." above. Specifically, the cited sections require the disclosure of effluent data even if such data constitutes a trade secret or confidential information. And disclosure is required, despite the character of the information, if the FWPCA requires disclosure. This last provision is particularly noteworthy in regard to disclosure to the EPA of information constituting a trade secret, as seems to be required by 40 C.F.R. § 124.35(c). It is our opinion that the above cited statutes provide the authority required by paragraph 9 above.

10. Authority to Terminate or Modify Permits.

Does the Missouri law provide authority to terminate or modify permits for cause, including the following:

- a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge?

[Relevant FWPCA provisions include Section 402(b) (1) (C); 40 C.F.R. §§ 124.45(b) and 124.72.]

The authority required by this paragraph is found in Sections 204.026(13) and 204.056 of the Missouri Clean Water Law.

Section 204.056.4 provides:

"Permits issued hereunder may be terminated or modified if obtained in violation of sections 204.006 to 204.141 or by misrepresentation or failing to fully disclose all relevant facts, or when required to prevent violation of any provision of sections 204.006 to 204.141, or to protect the waters of this state, when such action is required by a change in conditions or the existence of a condition which requires either a temporary or permanent reduction or elimination of the authorized discharge. . . ."

We read this section to provide the authority required by subparagraphs "10 b. and c." above.

With regard to subparagraph "10 a." above, Section 204.026(13) provides that the Commission shall "revoke" permits to prevent, control or abate any violation of the Missouri Clean Water Law or the FWPCA. Section 204.056.1 provides that the executive

secretary of the Commission shall institute investigations into "alleged violations of . . . any term or condition of any permit" Section 204.056.3 then provides that in the case where the executive secretary has attempted, but a violation cannot be eliminated by conference, conciliation or persuasion, or if necessary to immediately halt a danger to public health or welfare, the executive secretary "may file a complaint to revoke a permit" We read Sections 204.026(13) and 204.056 to authorize revocation of a permit for violation of any condition upon which the permit was issued. It is our opinion that the above cited sections provide the authority required by paragraph 10.

11.- Authority to Abate Violations of Permits or the Permit Program.

Does the Missouri law provide authority to:

a. Abate violations of:

- (1) Provisions requiring persons to obtain permits;
- (2) Terms and conditions of issued permits;
- (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and
- (4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling?

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

- (1) Injunctive relief, without the necessity of a prior revocation of the permit;
- (2) Civil penalties;
- (3) Criminal fines for willful and negligent violations; and

(4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement?

- c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied in which each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained?

[Relevant FWPCA provisions include Sections 402(b)(7), 309, 304(a)(2)(C), 402(h), 504; 40 C.F.R. §124.73.]

The authority required by this paragraph is found in Sections 204.026(20) and (23), 204.051, 204.056, and 204.076 of the Missouri Clean Water Law. The authority for the Commission to issue abatement orders is found in Section 204.056.3. The section provides that where there is a claimed violation of the Missouri Clean Water Law, or any standard, limitation, order, rule or regulation promulgated pursuant thereto, or a violation of any term or condition of a permit, one of the enforcement options available is for the executive secretary to order abatement.

With regard to the abatement of the specific categories of violations listed in subparagraph "11.a.", the violations and authorities for abatement orders issued by the Commission are:

(1) Violations of provisions requiring persons to obtain permits -- Section 204.051.2 provides that it is "unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source . . . unless he holds a

permit. . . ." Therefore, failure to obtain a permit before engaging in any of the acts specified in Section 204.051.2 is a violation of the Missouri Clean Water Law, for which an abatement order may issue.

(2) Violations of terms and conditions of issued permits -- Section 204.056.1 empowers the executive secretary to investigate, inter alia, the alleged violation of "any term or condition of any permit. . . ." Subsection 2 of that section provides that the executive secretary may, if he thinks it wise, endeavor to eliminate the violation by conference, conciliation or persuasion. Subsection 3 then provides that upon the failure of such conference, conciliation or persuasion, or if necessary to protect the health or welfare of persons from the discharge of pollutants, the executive secretary may order abatement. We read Section 204.056 to provide that the violation of the terms and conditions of an issued permit is subject to an abatement order by the Commission.

(3) Violations of effluent standards and limitations and water quality standards -- Sections 204.051.1(2) and (3) provide that it is unlawful for any person:

"(2) To discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission. . . .

(3) To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations"

Therefore, violations of the standards and limitations specified above constitute violations of the Missouri Clean Water Law, for which an abatement order may issue.

(4) Violation of requirements for recording, reporting, monitoring, entry, inspection, and sampling -- Section 204.026(20) authorizes the Commission to conduct certain investigations, and in connection therewith to enter upon private or public property. That section further provides that:

"[n]o person shall refuse entry or access, requested for the purposes of inspection under this provision, to an authorized representative in carrying out the inspection."

Refusal by any person to grant entry or access to a commission representative would constitute a violation of the Missouri Clean Water Law, for which an abatement order may issue.

Section 204.026(23) provides, as was discussed in paragraph 5, supra, that the Commission shall require those owning or operating water contaminant sources to maintain equipment, engage in testing, monitoring, and sampling, keep records and file reports. The means of requiring such activity would be by promulgation of rules and regulations and issuance of appropriate orders. The violation of the applicable rule, regulation or order would be a violation of the Missouri Clean Water Law, for which an abatement order may issue.

The authority to apply sanctions to enforce violations described in subparagraph "a." above, to the extent required by subparagraph "b." above, is found in Section 204.076. With regard to injunctive relief, Section 204.076.1 provides, inter alia:

"In the event the commission or its executive secretary determines that any provision of sections 204.006 to 204.141 or standards, rules, limitations or regulations promulgated pursuant thereto, or permits issued by, or any final abatement order, other order, or determination made by the commission or the executive

secretary, or any filing requirement under section 204.006 to 204.141 or any other provision which this state is required to enforce under any federal water pollution control act, is being, was, or is in imminent danger of being violated, the commission or executive secretary may cause to have instituted a civil action in any court of competent jurisdiction for the injunctive relief to prevent any such violation or further violation. . . ."

It should be noted that Section 204.076 does not require the revocation of a permit or issuance of an abatement order before seeking injunctive relief. We read Section 204.076.1 to provide the authority required by subparagraph "b.(1)" above.

With regard to civil penalties, Section 204.076.1, in addition to the injunctive relief discussed above, also authorizes:

". . .the assessment of a penalty not to exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper."

We read the above language to provide the authority required by subparagraph "b.(2)" above.

Criminal fines for willful and negligent violations are provided for in Section 204.076.3, which reads:

"Any person who willfully or negligently commits any violation set forth under subsection 1 shall, upon conviction, be punished by a fine of not less than twenty-five hundred dollars nor more than twenty-five thousand dollars per day of violation, or by imprisonment for not more than one year, or both. Second and successive convictions for violation of the same provision hereunder by any person shall be punished by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment for not more than two years, or both."

We read this section to provide the authority required by subparagraph "b.(3)" above.

With regard to the subparagraph "b.(4)" above, Section 204.076.2 provides:

"Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under sections 204.006 to 204.141 or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under sections 204.006 to 204.141 shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both."

We read this section to provide the authority required by subparagraph "b.(4)."

With regard to the authority required by subparagraph "c." above, the following points should be noted:

(1) The maximum civil penalty recoverable under Section 204.076.1 is \$10,000 per day of violation. This is the same civil penalty as is provided under the FWPCA.

(2) The maximum criminal fine for knowingly making a false statement, representation or certification under Section 204.076.2 is \$10,000, which is the same as the criminal penalty provided for such action under the FWPCA.

(3) The criminal fine for the willful or negligent commission of a violation, Section 204.076.3, is a minimum of \$2,500 and a maximum of \$25,000 per day, with the maximum fine doubling for second and successive convictions. This is the same fines as are provided under the FWPCA.

(4) Imprisonment for up to one year is provided under Section 204.076.3 for willful or negligent violations with a doubling of the maximum term for second and successive convictions. Imprisonment for up to six months is provided under Section 204.076.2 for knowingly making any false statement, representation or certification. These are the same terms as are provided for under the FWPCA.

The questions arises whether, before seeking civil or criminal penalties or fines or injunctive relief, the Commission must first exhaust administrative remedies via the abatement order procedure provided in Section 204.056.3. We note that Section 204.076.1 contains no qualifying language which would indicate that the administrative remedies must be exhausted before applying to the circuit court for relief. Section 204.076.1 provides that the commission or secretary "may cause to have instituted" the appropriate action. We read that section to provide for remedies which may be sought as an alternative to the administrative remedies provided in Section 204.056.3.

As was discussed in paragraphs "2.a." and "7", supra, although industrial users of publicly owned treatment works are not required to obtain permits under the Missouri Clean Water Law, the law does provide a means of direct enforcement of toxic material control and pretreatment effluent limitations against such industrial users. Reference should be made to those paragraphs for citations of the authority for such direct enforcement.

A final enforcement technique should be discussed. In the situation where a discharge of water contaminants presents a danger to public health, yet such discharge is not in violation of any regulation, standard or limitation of the Commission, the Commission has authority, nevertheless, to abate such discharge. Section 204.056.3 provides that an abatement order may be issued:

"...as required to immediately and effectively halt or eliminate any imminent or substantial endangerments to the health or welfare of persons resulting from the discharge of pollutants,
..."

We read this section to provide the authority required to act against the so-called "emergency episodes" referred to in the letter accompanying your opinion request.

It is the opinion of this office that Missouri law does provide authority to meet the requirements of the FWPCA pertaining to state administration of the NPDES permit program. It is the further opinion of this office that Missouri law contains all the authority specifically referred to in paragraphs one through eleven above.

Yours very truly,



JOHN C. DANFORTH
Attorney General

OUTPUT COMMITMENT AND REPORTING FORM

Program Element	FY 74		FY 75 Planned	First Quarter FY 75		Second Quarter FY 75		Third Quarter FY 75		Fourth Quarter FY 75	
	Planned	Actual		Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual
<u>NPDES Permits</u>											
Municipal	60	200									
Major			75	30		45		(1)		(1)	
Minor			475	200		275		(1)		(1)	
Industrial	232 (2)	216									
Major			0	(1)		(1)					
Minor			2,000 (3)	800		1,200					
Agricultural	20	0	20	5		15		(1)		(1)	
<u>Municipal Facilities</u>											
M&WT Plant Inspections	550	500	550	137		138		137		138	
Plan and Specification Review	N/A	N/A	80	20		20		20		20	
O&M Manual Review	65	45	50	12		13		12		13	
<u>Planning</u>											
* 303(e) Basin Plans submitted for EPA approval	4	2	6	1		1		2		2	
Segments requiring waste load allocations to be done	4	4	1	1		0		0		0	
** 201 Facility Plans completed	65	75	60	15		15		15		15	

* Attach list showing name and basin.

** Attach map of areas in State where 201 plans will be prepared.

(1) Only those which were not known or had not previously filed for a permit would be processed plus new facilities. At this time, it is impractical to estimate the numbers that may be involved.

(2) Does not include miscellaneous small non-municipal domestic waste treatment facilities.

(3) This is an estimated number of small private domestic waste treatment facilities based on our state permit program.

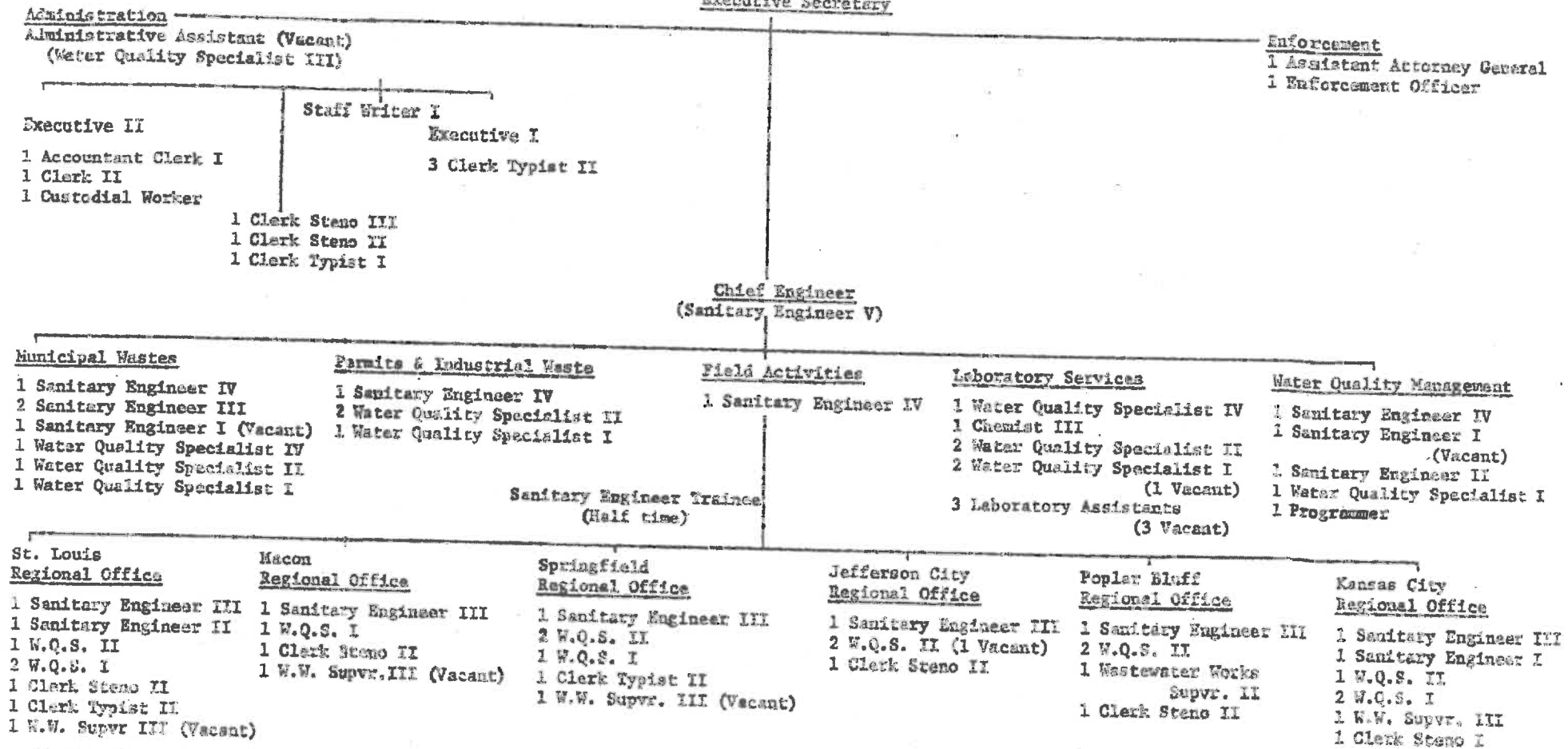
**FISCAL YEAR 75
OUTPUT COMMITMENT AND REPORTING FORM**

Page 2

Program Element	FY 74		FY 75 Planned	First Quarter FY 75		Second Quarter FY 75		Third Quarter FY 75		Fourth Quarter FY 75	
	Planned	Actual (2)		Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual
<u>Monitoring</u>											
Primary Monitoring Network Stations	68	68	70 (1)	70		70		70		70	
Chemical/Physical											
Biological											
National Water Quality Surveillance System Station Pairs (EPA/STATE)	10	10	10	1		1		1		1	
Number of Permit Compliance Inspections											
Municipal Facility	490	517	550	138		138		137		137	
Non-Municipal Facility	125	66	830 (3)	208		208		208		208	
P.L. 92-500 - Section 305(b) Report	N/A.		1	0		0		0		1	
Non-Point Source Activity	None		None								
<u>Training</u>											
Operator Training	60	109									
Entry		27	20	5		5		5		5	
Upgrade		82	80	20		20		20		20	
Operator Certification	20	107									
Entry		53	40	10		10		10		10	
Upgrade		54	30	7		8		7		8	
<u>Enforcement</u>											
Administrative Orders Issued	25	23	25	7		6		6		6	
Enforcement Conferences	25	20	30	8		7		8		7	

(1) 70 stations - all sampled in quarter (2) The actual outputs for FY 1974 shown on both of these sheets include projections for

TABLE OF ORGANIZATION
Fiscal Year 1975
Department of Natural Resources *
Clean Water Commission
Executive Secretary



* Subject to change after Department of Natural Resources is organized.

FISCAL YEAR 1975 FUNDING PRIORITIES *

	\$74,546,400
	<u>9,793,865</u>
Total	\$84,752,535

	\$64,752,535
	<u>15,944,578</u>
Total	\$48,807,957

rities	\$48,807,957
Awards	
	300,000
Total	\$48,507,957

PROJECT NUMBER	APPLICANT	PROJECT SCOPE	STEP	TOTAL PROJECT COST	FEDERAL ASSISTANCE FOR FY 75	PLANNING SEGMENT*** CODE	RANK	POINTS
0290578-01	Neosho Water & Wastewater Technical School	Activated Sludge Plant for Training Purposes	2-3	\$ 323,000	\$ 150,000	1004-F		
0290730-01	Rivermines	201 Facility Plan	1	7,500	5,625	0719-A	14	68
0290659-01	Bucklin	Complete new system	2-3	416,325	307,444	0913-E 0913-D		
0290435-02	Springfield	Additions to S.W. Plant, Trunk Sewers, Lift Stations	3	17,023,000	9,607,500	1005-A	1	59
0290677-01	Thayer	Expansion & Improvement of Treatment Plant & Int. Sewers	2-3	276,000	207,000	1005-F	35	57
0290740-01	Novinger	201 Facility Plan	1	13,000	10,640	0913-E	55	57
0290731-01	Exeter	New Treatment Facility & Int. Swrs.	2-3	353,000	263,250	1005-G 1004-F	18	55
0290725-01	Kansas City	201 Facility Plan for E. Blue River Interceptor	1	120,000	90,000	0912-B	6	54
0290704-01	Greentop	New Treat. Facility & Int.	2-3	360,000	140,250	0712-D 0913-E	34	54

PROJECT NUMBER	APPLICANT	PROJECT SCOPE	STEP	TOTAL PROJECT COST	FEDERAL ASSISTANCE FY 75	PLANNING CODE	SEGMENT RANK	PRIORITY POINTS
0290692-01	Lee's Summit	Middle Big Creek Lagoon & Int.	2-3	\$3,881,000	\$2,887,500	0914-A	39	56
0290715-01	Rich Hill	Complete System	2-3	1,596,669	1,189,627	0914-E	24	53
0290743-01	West Plains	201 Facility Plan	1	9,450	7,087	1005-F	35	53
0290727-01	Centralia	201 Facility Plan	1	10,365	7,774	0712-D	12	52
0290728-01	Leadwood	201 Facility Plan	1	12,000	9,000	0719-A		
						0719-C	41	52
0290721-01	Atlanta	201 Facility Plan	1	8,593	6,446	0913-E		
						0712-D	44	52
0290699-01	Smithton	201 Facility Plan	1	34,300	25,725	0912-L	32	51
0290670-01	Jaxessport	New Treatment Facility & Int.	2-3	353,963	96,954	0913-D	33	51
0290722-01	Polo	201 Facility Plan	1	10,000	7,500	0913-D	33	51
0290720-01	Frankford	201 Facility Plan	1	8,631	6,475	0912-F	37	51
0290676-01	Independence	Crackerneck Watershed Interceptors	2-3	162,600	118,200	0912-C	4	50
0290640-01	St. Peters	Gerdenne Crk. & Spencer Creek Treatment Facilities & Interceptors	2-3	1,061,000	788,250	0712-H	7	50
0290680-01	Platte City	Expansion & Improvement of treatment Facilities, Lift Station, Int.	2-3	653,500	482,625	0912-A	23	50
0290713-01	Malta Bend	201 Facility Plan	1	10,000	7,500	0912-K	29	50
0290674-01	Warrenton	New Centralized Treatment Facility	2-3	1,397,224	1,028,418	0712-G	45	50
						0912-T		
0290688-01	Parkville	Expansion & Improvement of Treatment plant	2-3	616,000	462,000	0912-J	15	49
0290671-01	Reeds Spring	201 Facility Plan	1	10,664	8,000	1005-C	16	49
						1005-D		
0290628-02	Met. St. Louis Sewer Dist.	Bonfile Secondary Treat. Plant & Interceptors	2-3	19,600,000	7,358,700	0912-V	39	49
0290703-01	Hannibal	New Secondary Treatment Facility	2-3	5,249,800	3,822,835	0712-F	37	49
0290658-01	Cuba	Expansion of Treatment Facility & Lift Station	2-3	182,040	100,120	0719-D	41	49
0290661-01	Essex	New Treatment Facility & Int.	2-3	283,000	88,290	1006-D	34	49

PROJECT NUMBER	APPLICANT	PROJECT SCOPE	STEP	TOTAL PROJECT COST	FEDERAL ASSISTANCE FY FY 75	PLANNING CODE	SEGMENT** EACH	PRIORITY POINTS
C290637-02	Springfield	Wilson Creek Trunk	3	\$1,920,000	\$1,350,000	1005-A	1	48
C290639-02	Lit. Blue Valley Sewer Dist.	Interceptors	2-3	18,837,000	8,601,875	0912-G	4	48
C290719-01	New London	New Secondary Treatment Facility	2-3	185,600	131,625	0712-F	37	48
C290705-01	Warsaw	Collector Sewers	2-3	510,000	382,500	0914-F	5	47
C290714-01	Verona	Complete System	2-3	414,560	302,595	1004-D	22	47
C290744-01	Pineville	201 Facility Plan	1	5,800	4,350	1004-C	25	47
C290663-01	Montrose	Complete System	2-3	398,150	292,537	0914-F	30	47
C290697-01	Wesubleau	Treat. Facility Improvements	2-3	138,427	129,076	0914-F	30	47
C290689-01	St. Robert	Complete System	2-3	1,443,764	1,052,823	0914-F	42	47
C290717-01	Kansas City	Shoal Creek Interceptor	2-3	11,200,000	3,535,000	0912-F	11	46
C290716-01	Kansas City	Weatherby Lake Interceptor	2-3	750,000	562,500	0912-J	15	46
C290675-01	Desoto	Westland Int. & Suburbia Int.	2-3	111,400	82,800	0722-I	18	46
C290710-01	Leasburg	201 Facility Plan	1	23,587	17,695	0719-D	30	46
C290706-01	Chilhowee	201 Facility Plan	1	10,000	7,500	0719-E		
						0912-K		
						0914-A	34	46
C290701-01	St. James	Complete System	2-3	1,571,380	1,169,535	0719-D	41	46
C290711-01	Bourbon	Improvements & Expansion of Treat. Facility, Int. & Lift Station	2-3	647,815	267,731	0719-D	41	46
C290694-01	Hayti Heights	201 Facility Plan	1	5,736	4,303	1006-D	44	46
C290698-01	Hayti	Expansion & Improve. Treat. Fac., Lift Station & Interceptor	2-3	176,986	37,760	1006-D	44	46
C290724-01	Bernie	Treat. Facility Improvements	2-3	258,000	171,000	1006-D	44	46
C290682-01	Marshfield	New Treat. Facility, Lift Sta., Int. & Collector Lines	2-3	1,225,000	917,250	0914-J	48	46
C290712-01	Ash Grove	New Treat. Plant, Lift Sta., Int. & Collector Lines	2-3	695,685	508,714	0914-G	49	46
C290683-01	Tipton	New Treat. Facility, Lift Sta. & Int.	2-3	358,000	262,500	0912-O	60	46
						0912-R		
C290700-01	Licking	Interceptor Sewer	2-3	465,000	344,000	0914-C	3	45

PROJECT NUMBER	APPLICANT	PROJECT SCOPE	STEP	TOTAL PROJECT COST	FEDERAL ASSISTANCE FY FY 75	PLANNING SEGMENT CODE	RANK	PRIORITY POINTS
0290086-01	Smithville	Water Treat. Plant & Wastewater Treatment Facility	2-3	\$ 46,220	\$ 34,665	0912-J	40	45
0290703-01	Fish	201 Facility Plan	1	13,340	10,000	1005-K	66	48
0290493-01	Met. St. Louis Sewer Dist.	Saxon Manor Interceptor	2-3	70,000	52,500	0718-C	28	44
0290684-01	Alba	Complete system	2-3	287,830	212,123	1004-C	39	44
						1004-D		
0290709-01	Washington	Improvements of Treatment Facility & Interceptor Sewer	2-3	2,135,900	461,925	0912-T	40	44
0290738-01	Farkville	201 Facility Plan	1	30,000	22,500	0912-J	15	43

" A list of Clean Water Commission FY 74 unfunded priorities is attached. These projects will retain their priority until funded.

** \$283,840 of Missouri's federal FY 73 allocation has not yet been designated for a specific use by the Commission.

*** As designated in the State of Missouri's "Continuing Planning Process" dated May 1973.